

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EBER G. RUTH,

Plaintiff,

v.

LANDON BIRD, et al.,

Defendants.

Case No.: 1:23-cv-00529-ADA-CDB (PC)

**ORDER DIRECTING PLAINTIFF TO PAY
FILING FEE WITHIN FOURTEEN (14)
DAYS**

Plaintiff Eber G. Ruth is proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

Plaintiff commenced this action with the filing of a complaint and an application to proceed *in forma pauperis* (“IFP”) on April 5, 2023. (Docs. 1 & 2.)

On April 11, 2023, the Court issued Findings and Recommendations to deny Plaintiff’s IFP application, finding he had accrued three or more “strikes” under 28 U.S.C. § 1915 and failed to show he was under imminent danger of serious physical injury. (Doc. 7.) It was recommended Plaintiff be ordered to pay the \$402 filing fee within thirty (30) days. (*Id.* at 4.) Plaintiff filed his objections to those findings on April 21, 2023. (Doc. 8.)

On June 30, 2023, District Judge Ana de Alba adopted the Findings and Recommendations in full, denying Plaintiff’s application to proceed IFP and ordering he pay the

1 \$402 filing fee within 30 days of the date of service of the order. (Doc. 9.)

2 In response, Plaintiff filed a notice of interlocutory appeal in the Ninth Circuit Court of
3 Appeals on July 14, 2023. (Doc. 10.)

4 On November 7, 2023, the Ninth Circuit issued its Order. (Doc. 13.) The appellate court
5 dismissed the appeal for Plaintiff's failure to prosecute, as Plaintiff did not pay the filing and
6 docketing fees associated with the appeal. (*Id.*) The order was to "act as and for the mandate" of
7 that court "21 days after" service on the district court. (*Id.*)

8 Because the appellate court's order is now final and the interlocutory appeal is resolved,
9 this Court may address the issue of the outstanding filing fee for this action.

10 **II. CONCLUSION AND ORDER**

11 Plaintiff must pay the filing fee for this action in accordance with Judge de Alba's June
12 30, 2023, order. Accordingly, **IT IS HEREBY ORDERED** that Plaintiff **SHALL** pay the \$402
13 filing fee **within 14 days** of the date of service of this order.

14 **Plaintiff is advised that should he fail to pay the required filing fee within 14 days of**
15 **the date of service of this order, this action will be dismissed.**

16 IT IS SO ORDERED.

17 Dated: **November 29, 2023**

18 
UNITED STATES MAGISTRATE JUDGE